IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.146 OF 2001
IN
WRIT PETITION NO.2713 OF 1992

Shri Bhagchand H. Sonigara .. Petitioner

Vs.

Shri Malhari V. Taras
since deceased through his L.R.s
1A Sonabai Malhari Taras & Ors. .. Respondents

Mr.S.U.Kamdar i/b Mr.R.N.Sanghavi for the petitioner

Mr.A.S.Patil i/b Ms.Suhasini Mutalik for respondent nos.2 to 7

Mr.R.M.Patne, A.G.P. for respondent nos.9

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 8TH OCTOBER, 2007

P.C. (Per J.N. Patel, J.):

1. Heard the learned counsel for the parties.

2. This Letters Patent Appeal has been preferred impugning the decision dt.6.2.92 of the Charity Commissioner, Maharashtra State, Bombay which came to be confirmed by the learned single Judge of this court by judgment and order

dt.01.02.01 in Writ Petition No.2713 of 1992. The learned single Judge of this court directed the respondent trust to refund the amount of Rs.50,000/- along with simple interest thereon at the rate of 11% per annum from the date of payment till payment and directed payment to be made within 4 weeks from the date of passing of the order. By observing that the Charity Commissioner was justified in revoking the sanction order dt.27.01.1988 passed by the Joint Charity Commissioner, Pune in Application no.176 of 1987 on the background that the Government of Maharashtra by its Notification, appearing in the Government Gazette dated 07.10.1989 has released the land in question for non-agricultural development. The learned single Judge found that the Charity Commissioner is clothed with such powers if sub section 2 of section 36 of the Bombay Public Trust Act, 1950 is read alongwith section 41E of the B.P.T.Act.

3. In nutshell the background facts which led to the passing of the impugned order by the Charity Commissioner which came to be confirmed by the

learned single Judge of this court can be summed up as under;

4. The Respondent Magas Varga Seva Sangh, a public trust having registration no.F-507(Pune), purchased the land out of survey no.40, Hissa No.1-4/1B, admeasuring about 3 acres situated at Kivale, Tal. Haveli, Dist. Pune from Malhavi Vithoba Taras by registered sale deed which came to be registered in the office of the Sub Registrar Haveli No.I at Sr.No.840 dated 17.04.1978 for the purpose of erecting a school building and hostels. It so happened that as the trust was indebted in the sum of Rs.2,73,687/- it was decided to alienate the said property and therefore, they filed an application dated 6.2.86 with the Joint Charity Commissioner, Pune for disposal of the said land. A public notice was published on 06.02.1986 in Dynic Rashtra Tej and again on 20.12.1987 calling for offers and objections, if any. After considering the same, the Joint Charity Commissioner by its order dated 21.07.1988 accorded sanction under section 36(1)(a) of the Bombay Public Trust Act, 1950 to sell the part of the

immovable property of the above trust and piece of land bearing Survey No.40 Hissa Nos.1 to 4 part 1B, admeasuring 3 Acres to the trustees for a sum of Rs.1,80,000/- on certain terms and conditions.

5. Pursuant to the said order, the appellants paid a sum of Rs.50,000/- as earnest money to the respondent trust. It appears that while the transaction was being processed, the predecessor in title of the land in question sold to the trust, Magas Varga Seva Sangh filed an application before the Joint Charity Commissioner under section 36(2) of the Bombay Public Trusts Act, 1950 objecting to the said transaction on various grounds. One of the major issue being that the land in question is declared as non-agricultural land by the State Government by its Notification dated 07.10.1989. The application was transferred before the Charity Commissioner who after examining the matter found that the Chairman of the trust filed an application dt.18.07.1990 alongwith the Xerox copy of the Notification and brought to his notice that the permission to sell the land to Shri Bhagchand Himmatmal Sonigara and others, be cancelled and in

the interest of the Trust, it be granted permission to sell the plots, after getting the lay-out sanctioned by the Collector, Pune. Subsequently, it so happened that the trust did not press for the application and requested the Charity Commissioner to confirm the order of the Joint Charity Commissioner dated 27.01.1988.

6. The Charity Commissioner took notice of the fact that in so far as the application filed by Malhari Vithoba Taras, the predecessor in title who has sold the land in question to Magas Varg Seva Sangh is concerned, he has executed an unconditional sale deed i.e. without any restriction that the land in question would be utilised only for a particular purpose, or if it is to be re-sold, it will be returned back to the applicant Mr.M.V.Taras and, therefore, the objection raised by him relating to the said transaction was held to be of no substance but he agitated that the market value of the trust property has gone up to Rs.3,00,000/- for the reasons that the land in question has been now declared as available for non-agricultural

development and felt that it will be proper to revoke the order of sanction dated 27.01.1988 and if at all the Magas Varg Seva Sangh wants to sell the land in question, it will have to go in for proper advertisement and in the event alongwith the prospective purchasers, the present applicant, can offer their bid and for the said reason the Charity Commissioner revoked the sanction order dt.21.7.1988 which was challenged before this court which came to be confirmed by the learned single Judge.

7. Mr.Kamdar, the learned counsel appearing for the appellants submits that the impugned order passed by the Charity Commissioner cannot be sustained in law as after the Charity Commissioner has accorded sanction under section 36 of the Bombay Public Trusts Act, he can revoke the same only under sub section 2 of section 36 and there is no other provision under the Bombay Public Trusts Act which vests power in the Charity Commissioner to revoke his order of sanction. It is submitted that the impugned order is passed on the ground that due to passage of time the land in question

for which sanction was accorded by the Joint Charity Commissioner having been notified in the development plan as available for non agricultural development, that itself cannot be a reason to revoke the sanction as sub section 2 of section 36 of the said Act does not provide for such a contingency and, therefore, the impugned order was without any Jurisdiction vested in the Charity Commissioner and therefore, illegal and liable to be quashed and set aside.

8. It is further submitted by Mr.Kamdar, the learned counsel for the appellants that the learned single Judge has misread the provisions of section 36(2) alongwith s.41(E) of the Bombay Public Trusts Act and upheld the order of the Charity Commissioner which is erroneous as the two sections operate in different fields and even combined reading of subsection 2 of section 36 and 41(E) does not vest with the Charity Commissioner any powers to revoke the sanction accorded earlier for sale of the land unless it meets the requirements of sub section 2 of section 36 i.e. unless it shows that the sanction was obtained by fraud or

misrepresentation or by concealing the facts material for the purpose of sanction which is not the case. It is further submitted that the plain reading of section 41E would go to show that the said provision vest in the Charity Commissioner or its subordinates to act in the interest of the trust for the protection of Charities and enable the Charity Commissioner to grant injunction to preserve the trust property but does not provide for revocation of the sanction granted u.s.36 of the B.P.T. Act for sale of the immovable property of the trust.

9. It appears that during the pendency of the appeal, the legal heirs of Mr.Malhari V. Taras at whose instance the proceedings were initiated which led to the passing of the impugned order were brought on record as Mr.Malhari V. Taras has expired but the appellants have deleted them as they were not proper or necessary party which also stands substantiated from the finding of the Charity Commissioner in the impugned order nor this was the reason for revocation of the sanction. Market Value was found to be unjustified for

revocation of the order of sanction dt.27.1.88 as subsequently the user of the land was changed in the Development plan from agriculture to non-agriculture.

10. On behalf of the trust, it is submitted that the trustees have acted in a bonafide manner and that after the sanction was accorded nobody interested in the affairs of the trust as well as its beneficiaries have challenged the order and that at the relevant time whatever was the best offer received by the trust was accepted and duly examined by the Joint Charity Commissioner who accorded sanction to alienate the land in accordance with the terms and conditions specified in the order.

11. It is submitted that due to passage of time, there was a change in the development plan which did appreciate the value of the property and that the trust having taken a decision not to develop the property itself, as observed by the Charity Commissioner, has passed a resolution that the property can be sold to the appellants in

accordance with the order of sanction and on negotiation the appellants have agreed to pay a sum of Rs.5,00,000/- lacs instead of Rs.1,80,000/- and that they are tendering the copy of the resolution alongwith the praecipe in the court. Copy of the resolution is taken on record and marked X for identification.

12. On behalf of the Charity Commissioner, the learned A.G.P. submitted that the Charity Commissioner is enjoined with the responsibility of not only overlooking the administration of the public trusts but also to see that the trustees act in the interest of the trust and for that reason s. 36 of the B.P.T.Act provides that no sale, exchange or gift of any immovable property, and no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. This is a check laid by the statute on the alienation of immovable property by the public trust and Approval by the Charity

Commissioner ensures reasonableness of the transaction and that it is in the interest of the trust.

13. The learned A.G.P. fairly concedes that in so far as the present case is concerned, the Charity Commissioner having rejected the application, the predecessor in title of the land in question was not vested with any power to revoke the order of sanction for reasons other than provided in subsection (2) of section 36 of the B.P.T.Act. On principle, ld.A.G.P. has submitted that there can be no quarrel over the issue as provisions of s.41(E) of the Bombay Public Trusts Act cannot be read to vest with the Charity Commissioner the powers to revoke the valid sanction accorded u.s.36 and, therefore, this court may pass appropriate orders in the matter.

14. The issue is well settled that the power under Section 36(2) is not a power to review. Power can be invoked only if there is fraud, misrepresentation or concealment of material for vitiating sanction granted and the sanction granted

merges into the sale deed executed. The Joint Charity Commissioner on examining the case was satisfied and accorded sanction to the Trust to alienate the land in favour of the appellants who were at the relevant time the highest bidder. There is nothing on record to show that there was any fraud, concealment of material which would vitiate such sanction except that subsequent to the grant of sanction after the appellants deposited the earnest money and the matter was being processed for execution of sale deed an application came to be filed by the predecessor in title of the land sold to the trust i.e. Magas Varga Seva Sangh trust that the land in question now being notified in the development plan for non-agricultural purpose thereby its value would stand appreciated. The sanction came to be accorded by the Joint Charity Commissioner by considering all the pros and cons as prevailing on the date. The order of sanction came to be passed and at the relevant time, there was nothing brought on record that the development plan permits the subject matter of the application for according sanction i.e. use of agricultural land for non-agricultural purpose and,

therefore, question of invoking sub section 2 of section 36 does not arise at all.

15. In so far as s.41(E) is concerned, the learned single Judge has not examined the issue in its correct perspective but merely observed that the court should not exercise its extraordinary jurisdiction to interfere with the order of the Charity Commissioner under the apprehension that it is not as if the Joint Charity Commissioner was not clothed with the power and further it observed that at the highest, section 41E contemplates that it should be brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by atleast two persons having interest and that is only a procedural requirement so as to ensure that frivolous applications are not made and/or that there is some responsibility for the matter being placed before the Charity Commissioner. It was brought to the notice of the Charity Commissioner that the value of the property for which it was sold was less than the market value. Apart from that during the pendency of the

proceedings it transpired that the property had been changed into non-agricultural use and on the basis of which considering public interest invoked the powers and set aside the sale. With due respect to the learned single Judge, that is not the purport of section 41E so as to enable the Charity Commissioner to interfere with sanction which was accorded complying all the requirements necessary for the same. Therefore, we quash and set aside the impugned order passed by the Charity Commissioner revoking the sanction accorded by the Joint Charity Commissioner as on the date of the order so also the judgment and order of the learned single Judge.

16. The appellants have agreed to pay a sum of Rs.5.0 lacs towards consideration of the said piece of land which was the subject matter of the application seeking sanction. The parties are at liberty to take further steps and complete the transaction in accordance with the terms of negotiation which has been accepted by the respondent trust under the resolution placed before this court. They shall inform the Charity

Commissioner immediately after completion of the transaction so that necessary entry be made in the Register of property owned by the Trust.

17. The appeal is allowed on the aforesaid terms with no order as to costs. In view thereof, Civil Application No.289 of 2007 and 165 of 2001 do not survive. The same are dismissed as infructuous.

(J.N. PATEL, J)

(A.A. SAYED, J)